

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
)	
)	
Annual Assessment of the Status of)	MB Docket No. 07-269
Competition in the Market for the Delivery of)	
Video Programming)	
)	

REPLY COMMENTS OF THE CITY OF NEW YORK

I. INTRODUCTION

The City of New York (“City”) hereby submits the following reply comments in response to the Further Notice of Inquiry released by the Federal Communications Commission (“Commission”) in the above captioned proceeding.¹ The City will respond both to the National Cable & Telecommunications Association’s (“NCTA”) assertions about the degree of competition in the wireline multichannel video programming distribution (“MVPD”) market,² and the Commission’s questions about how regulations have affected entry and rivalry in this market.³ These reply comments describe the continued need for the regulatory framework established by Title VI of the Communications Act, as amended,⁴ and how the City has used this framework to ensure

¹ *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Further Notice of Inquiry, MB Docket No. 07-269 (rel. April 21, 2011) (“*Further Notice*”).

² See generally Comments of the NCTA (filed June 8, 2011) (“NCTA Comments”).

³ *Further Notice* at ¶21.

⁴ 47 U.S.C. §§ 521-573.

that its residents have contractually guaranteed access to at least two wireline MVPD operators.

II. COMPETITION IN WIRELINE MVPD MARKET

In its comments, the NCTA asks the Commission to consider including in its report to Congress recommendations about the modification or repeal of various Title VI provisions.⁵ The NCTA's assertions are based on its claims that the MVPD marketplace is sufficiently competitive to obviate the need for certain Title VI requirements.⁶

The City urges the Commission to move cautiously in responding to such assertions, as the level of competition in the relevant market is in the early stages, and the wireline MVPD market is unlikely to be fully competitive for the foreseeable future. The competition offered by the entrance of the large telephone companies into the wireline MVPD market, when viewed on a nationwide basis, is still in its infancy. As the NCTA itself notes, the telephone companies' share of MVPD customers was a mere 7% as of 2010.⁷ The other forms of competition cited by the NCTA are also limited in their competitive effect. DBS technology remains constrained in its ability to provide fully competitive information services to bundle with its video service, and even in the purely video marketplace is not well-suited to all topographies. For example, in dense urban areas, such as much of New York City, DBS is often not a viable alternative. Finally, the potential for competitive pressure from on-line video distributors is still speculative, especially given that (among other constraints and limitations) the all-important internet

⁵ NCTA Comments at 7.

⁶ *See generally* NCTA Comments.

⁷ *Id.* at 8.

connection needed for these distributors is often provided by the wireline MVPD operators themselves.

The capital costs of entry into the wireline MVPD market remain very high. Likewise, customers also face comparatively high costs in switching providers, such as lost promotional fees, time associated with contacting a new provider and staying home for a new connection, and, in a world where the bundling of multiple services is increasingly frequent, dealing with changes in phone, internet, e-mail and similar service provision as well.

II. THE WIRELINE MVPD MARKET IN THE CITY OF NEW YORK

Despite the current limitations on the competitive nature of the wireline MVPD market, the City, due to its franchising authority, has ensured that residents within the five boroughs are well on their way to having *guaranteed access* to at least two wireline MVPD operators. Without some local involvement, it has been the City's experience that "market factors" alone would not have generated this result. Since 1970, the City has been entering into franchise agreements with cable operators. We describe below how the City's use of its franchising authority is bringing *actual* competition to residents, and the other ways in which the City's franchising process has benefitted wireline MVPD customers.

Based on franchise agreements with Time Warner Cable of New York City ("Time Warner") and Cablevision Systems New York City Corporation ("Cablevision"), virtually every household in the City has had guaranteed physical access to at least one wireline MVPD operator for well over a decade. Based on a 2008 franchise agreement with Verizon, City residents are also now *contractually guaranteed* to have physical

access to a second, competing, wireline MVPD operator. Construction of Verizon's competitive FiOS system is already far along ("homes passed" for FiOS in the City is now well past the 50% mark) and pursuant to carefully negotiated local franchise requirements, will achieve the goal of making competitive service available to all households in the City within the next several years. In addition, the City has an open video system agreement with RCN Telecom Services of New York, Inc. ("RCN"), which means that residents in certain parts of the City currently have a choice of three wireline MVPD operators.

Based on the most recent census figures, about 3 million of the nation's 112 million households were located within the City of New York.⁸ Hence, due to the City's franchise agreements, between 2.5% and 3% of U.S. households will have *contractually guaranteed* access to two wireline MVPD operators by 2014. By remaining steady in the commitment to demanding franchise obligations for universal build-out, the City has utilized its franchise authority to establish an environment for ubiquitous competitive current and future wired infrastructure that is unsurpassed.

There are households within the boundaries of the City of New York that, because of neighborhood demographics and/or location and infrastructure issues, would not, as a purely market-based matter, be served by facilities of the quality and capacity offered by Time Warner, Cablevision, and Verizon's FiOS. It is only because City policymakers held, and exercised, franchise authority to assure that *all* households in the City would be

⁸ See <http://quickfacts.census.gov/qfd/states/36000.html> (last accessed July 8, 2011) (number of households in New York City obtained by adding together households in the five counties included within City limits – New York, Bronx, Kings, Queens, and Richmond).

served, and that a franchisee's investment decision would reflect not a household-by-household economic evaluation but a broader evaluation of the profit potential of investment across its franchise area as a whole (including a commitment to build to *all* homes in the franchise area), that universal access commitments from multiple competing wired video programming delivery providers could be achieved.

New York State law has also assisted in the establishment of a competitive environment for wireline MVPD operators. On the issue of access to multiple dwelling units ("MDUs"), since 1972, New York State law has prohibited a landlord from "interfer[ing] with the installation of cable television facilities upon his property or premises, . . ."⁹ While the law makes some allowances for reasonable accommodations to protect the landlord's premises and well-being of tenants, the thrust of the provision is to give franchised operators access to residential customers. Further, the City's franchise agreements include commitments by the franchisees to make use of their rights under section 228 of the New York State Public Service Law to gain access to MDUs. Hence, New York State and the City have used the authority available to them to both facilitate access on behalf of cable operators, and to further assure residents access to MVPD operators.

Through the inclusion of consumer protection requirements in its franchise agreements, the City ensures a certain standard of service quality for its residents. In its role as the franchising authority, the City fields thousands of complaints and questions annually from residents regarding their cable service. Local governments are best equipped to handle such tasks, given the wide variations in local needs and conditions.

⁹ New York State Public Service Law, Section 228.

For example, in New York City, the density of multiple dwellings can create service issues that may not arise in other locations.¹⁰

As part of its efforts to ensure customer service quality for residents, the City's franchise agreements have historically contained technical standards, which, along with regular monitoring of compliance with these standards, have ensured that cable operators deploy and/or upgrade their networks in a way that gives residents "state-of-the-art" facilities with adequate capacity. As noted above, the City often finds itself as the primary recipient of customer service complaints. Without transmission standards against which it can assess performance, the City is sometimes in a difficult position to respond to such complaints and consumers may be in a difficult position to assess comparative levels of performance and compliance by competitors.¹¹

Additional ways in which the City has used the cable franchising process to benefit residents has been through the inclusion of provisions relating to public, educational, and governmental ("PEG") access¹² and the City's institutional network ("I-Net").¹³

¹⁰ At 26,402.9 people per square mile, New York City has the greatest population density of any American city with a population of 100,000 or more. http://en.wikipedia.org/wiki/List_of_United_States_cities_by_population_density (last accessed July 7, 2011). By contrast, for example, the population density of Chicago is 12,750.3 per square mile. The population density of Wichita is 2,536.1 per square mile. [http://en.wikipedia.org/wiki/Wichita, Kansas](http://en.wikipedia.org/wiki/Wichita,_Kansas) (last accessed July 7, 2011).

¹¹ In this regard, the City believes the Commission should commence a proceeding to establish digital transmission standards for cable television service to bring its previously adopted analog standards up to date.

¹² The City's PEG access channels have helped deliver to City residents diverse and uniquely local programming. The public access channels offer borough specific information and local programming that might not otherwise be available on traditional cable networks. The educational and governmental channels are used for, among other things, programming of the City University of New York, C-SPAN type coverage of City Council and other local government proceedings, live video feeds of traffic conditions at key locations, and foreign language programming serving otherwise underserved communities and foreign language students.

IV. CONCLUSION

The City is enthusiastic about the prospects for competition in the wireline, MVPD market, based on the entry of new providers, such as the telephone companies. At this time, however, such competition is in its infancy. Consequently, the framework established by Title VI still plays a significant role in ensuring the widespread deployment of wireline MVPD facilities, and the quality of service associated with those facilities. The City commends the Commission on its efforts, through the *Further Notice*,

¹³ The City's I-Net was established through the use of funds, fiber, and accessories provided by the City's cable and other franchises. (It is relatively easy for companies to set aside excess capacity, or provide links between buildings, when they themselves are deploying new facilities). The City has used its I-Net in many innovative ways that have brought expanded services to residents. For example, the City uses the I-Net for employee training, including first responder training, and for ensuring there are redundant communications capabilities for police, fire, and first responder needs.

to acquire clearer data on the degree of competition in both the MVPD sub-markets and the market overall, but cautions against any flash-cut changes to the current regulatory framework for wireline MVPD operators. It is the City's experience that the Title VI framework has *enhanced* and *will continue to enhance* the deployment, effectiveness, and competitiveness of wireline MVPD facilities and services across the United States.

Respectfully submitted,

/s/

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